

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JERRY D. MULLEN)	
Claimant)	
VS.)	
)	Docket No. 247,342
ANDOVER RESORTS AND COUNTRY CLUB)	
Respondent)	
AND)	
)	
SIERRA INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals the September 23, 1999, Order of Administrative Law Judge John D. Clark. In the Order, the Administrative Law Judge granted claimant medical treatment with Dr. Douglas T. Davidson and temporary total disability compensation beginning July 22, 1999. The Administrative Law Judge found claimant had suffered accidental injury arising out of and in the course of his employment through his last day worked of July 21, 1999. The Administrative Law Judge also found claimant had provided notice of his injury to respondent within 75 days of the accident and went on to find just cause for exceeding the ten-day limit set forth in K.S.A. 44-520.

ISSUES

- (1) Did claimant prove accidental injury arising out of and in the course of his employment with respondent on the date or dates alleged?
- (2) Did claimant provide timely notice of accident pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant worked as a seasonal full-time employee with respondent, performing grounds keeping work, mowing and general golf course upkeep. In July 1998, claimant began experiencing difficulties in his left leg, and more particularly the knee. He obtained treatment from Dr. Michael Wilson, his family physician. He advised Dr. Wilson in his first appointment of July 10, 1998, that the pain in the left knee had been bothering him for

several days, and that the mower he uses at the golf course where he works puts a lot of pressure on his left foot and he believes that this is irritating his knee.

Claimant returned to Dr. Wilson in July 1998, again complaining of the left leg and knee and attributing it to his work on the mower. As claimant's work was seasonal, he did not work the winter of 1998.

In the spring of 1999, he returned to work with respondent, this time as a full-time year-round employee. He again began experiencing problems with his left knee in June of 1999. He returned to Dr. Wilson on June 10, 1999, complaining of pain in the knee, again attributing it to the operation of the mower. Dr. Wilson elected to treat claimant's knee conservatively, recommending a knee brace. Claimant was off work for approximately two weeks in either June or July 1999 because of the knee problem. He took a week's vacation to cover one of the weeks, but the record is not clear whether he received any income during the other week. It is also not clear from the record exactly when this time off work occurred. Claimant did, however, return to work with respondent in July 1999 and continued as a grounds keeper.

Claimant complained, on more than one occasion, to his supervisors about the knee but, according to James M. Jordan, the golf course superintendent, William A. Rodriguez, the assistant golf course superintendent, and Richard M. Iorio, the assistant golf professional, claimant at no time advised them that his ongoing knee problems were related to his employment. During cross-examination, claimant also acknowledged that he did not tell respondent that his knee and leg condition was work-related until after he was terminated because of his inability to perform his work.

By mid-summer 1999, claimant was experiencing more significant problems not only in the knee but also the leg and the hip on the left side. Claimant was referred by Dr. Wilson to Dr. Douglas T. Davidson, an orthopedic surgeon. Dr. Davidson first saw claimant on July 28, 1998, for complaints to the left knee and left lower extremity. Claimant's history provided to Dr. Davidson is the same as provided to Dr. Wilson in that he attributed the mowing on the heavy machine and the constant use of the foot pedal on the left side as being an aggravating factor to the left leg pain. Dr. Davidson suggested an MRI which was performed on August 12, 1999, displaying a herniated disc at L3-L4 on the left side. Dr. Davidson recommended epidural injections and, if those proved to be unsuccessful, discussed the possibility of surgical intervention.

Claimant last worked for respondent on July 21, 1999. He was terminated on August 14, 1999, due to his inability to perform his work. Once claimant was advised of the back problems, he notified respondent of the work-related nature of his injuries by letter from his attorney which reached respondent on August 20, 1999.

Along with his work with respondent, claimant also performed landscaping work on the side. He would periodically borrow tools from respondent in order to perform this work,

and respondent was aware of claimant's landscaping activities. Claimant described the work as not very physical primarily due to the fact he had other laborers perform the heavy work while he supervised. He did acknowledge the landscaping would require periodic kneeling, but again most of the heavy physical labor was performed by hired workers. Claimant did not describe the landscaping work as being a significant aggravating factor to his knee or left lower extremity.

The notice of termination prepared by respondent indicated claimant left his job voluntarily for personal reasons and went on to state that claimant's injury to his knee was a personal injury. This notice of termination was neither signed nor seen by claimant.

In proceedings under the Workers Compensation Act, it is claimant's burden to prove his or her entitlement to the benefits requested by a preponderance of the credible evidence. See K.S.A. 1998 Supp. 44-501 and K.S.A. 1998 Supp. 44-508(g).

In reviewing the evidence, the Appeals Board finds claimant did suffer accidental injury arising out of and in the course of his employment with respondent through July 21, 1999, his last day worked. Claimant's injury did not occur as a trauma but rather as a series of microtraumas over a substantial period of time. Therefore, pursuant to Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994), the Appeals Board finds the claimant suffered a series of accidents through July 21, 1999.

K.S.A. 44-520 obligates a claimant to provide notice of an accident, stating time, place and particulars, within ten days after the date of the accident. Actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of this notice unnecessary. In addition, if there is just cause for claimant's failure to provide notice within ten days, the notice time will be extended to 75 days from the date of accident.

In every instance, when claimant was being treated by either Dr. Wilson or Dr. Davidson, he advised the physicians that mowing with respondent's equipment and the use of the foot pedal on the left side aggravated his left lower extremity condition. Respondent's representatives, including the golf course superintendent, the assistant golf course superintendent and the assistant golf professional, were aware claimant was having ongoing problems with the knee, but testified that claimant failed to advise them of the work-related nature of this problem. Claimant did, however, advise them on more than one occasion that he could not continue working because the pain in his leg was so severe. He was told by at least one of his supervisors that he needed to get it taken care of.

The evidence in this matter is contradictory. Claimant testified he did not advise the respondent of the work-related nature of his injury while, at the same time, advising his supervisors that he was having difficulty performing his work duties due to the pain. Respondent's witnesses testified they were unaware of the work-related nature of claimant's injury and yet admitted that they knew claimant was having difficulty completing

his work duties because of the pain and limitations. Finally, it is noted claimant was unaware of the full extent of his problems. Until the MRI was performed on August 12, 1999, claimant and his treating doctors were unaware of the involvement of claimant's low back. At that point, it became obvious to claimant that he was suffering from a work-related problem rather than merely old age as he had earlier thought. After receiving this information, claimant immediately advised respondent that he felt this was related to his employment, with that notice reaching respondent eight days after the MRI was received.

The Appeals Board acknowledges that the record in preliminary hearing situations is often less complete than is desirable. Further explanation of claimant's conversations with respondent as well as his understanding of his physical injuries would benefit the finder of facts in attempting to resolve this dispute. However, for preliminary hearing purposes, the Appeals Board finds that claimant has provided notice to respondent of the leg and knee injuries, and of the back injury which first came to light on August 12, 1999. The Board also finds just cause for not providing notice within ten days. Therefore, the letter to respondent of August 20, 1999, would satisfy the notice requirements of K.S.A. 44-520 for preliminary hearing purposes.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated September 23, 1999, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Terry J. Torline, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director